IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2007

Coram

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

W.P.No.9405 of 1998

The Management of Kanchi Thalivan
Nesavalar Kooturavu Urpathi Matrum
Virapani Sangam Ltd.,
Mariamman Koil Street,
Srivilliputhur - 626 125 ... Petitioner

-Vs.-

1. The Presiding Officer,
Labour Court, Madurai - 20.

2. Thiru G.Sivakaminathan .... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the first respondent in its I.D.No.480 of 1992 dated 17.10.1997 and quash the same.

For Petitioner : Mr. R.Parthiban
For Respondents : Mr. Srinivasa Raghavan, for R-2.

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O R D E R

Being aggrieved by the award of the Labour Court granting the relief of compensation of Rs.35,000/- on the ground of mercy, after holding that the charges levelled against the second respondent-workman have been proved, the petitioner-Management has filed the above writ petition.

2. Admittedly, the finding of the Labour Court has not been challenged by the second respondent. Therefore, the only question that arises for consideration in the above writ petition is whether the Labour Court in exercise of powers conferred under Section 11(A) of the Industrial Disputes Act could have granted the relief of compensation of Rs.35,000/-.

3. Mr.R.Parthiban, learned counsel for the petitioner, by relying upon the decisions reported in 2002 (1) L.L.N.1026 (N.Kumaresan Vs. Presiding Officer, Labour Court and another) and 2001 (1) L.L.J. 253 (Cholan Roadways Corporation Limited Vs. M.Nagarajan), submitted that the Labour Court is not justified in granting the relief of payment of ex-gratia of

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Rs.35,000/- to the second respondent after holding the non-employment of the petitioner as justified.

4. Per contra the learned counsel for the second respondent, by relying upon a decision of the Apex Court reported in Volume 77-1990 F.J.R. 1 (Workmen of Bharat Fritz Werner Vs. Their Workmen and Another) submitted that considering the fact that the allegation against the second respondent was only that he abetted the commission of the offence of theft, and he was not directly involved in the offence the Labour Court has granted the ex-gratia payment of Rs.35,000/- and as such the discretion exercised by the Labour Court cannot be said to be improper.

5. In the decision reported in 2002 (1) L.L.N.1026 (referred to supra), in paragraph 8, a Learned Judge of this Court has observed as follows:-

> "8. The next question that remains to be considered is as to whether the first respondent was justified in granting the relief of payment of ex gratia of Rs.25,000 to the petitioner. It is too well settled that while exercise the power under S.11A of the Industrial Disputes Act, first and foremost, the first respondent should give a finding as to whether the non-employment was not justified so as to invoke the said power available under S.11A of the Industrial Indusputes Act. When once the first respondent comes to a conclusion that the non-employment was justified, there is absolutely no scope for the first respondent to deal with the other question as to whether the punishment is disproportionate or not. In other words, in cases where the Labour Court comes to the conclusion that the non-employment was not justified, there is every scope for interfering with the punishment by invoking S.11A of the Industrial Disputes Act. But when once the first respondent came to the conclusion that the non-employment of the petitioner-workmen was justified, there is no jurisdiction for the first respondent to move forward and consider the question about the adequacy of the punishment imposed. Such being the legal position, the award of the first respondent-Labour Court granting relief of a sum of Rs.25,000 by way of ex gratia is beyond its jurisdiction. Therefore, the said part of the award is liable to be set aside."

6. In the decision reported in 2001 (1) L.L.J. 253 (referred to supra) in paragraphs 7 and 8, it is observed as follows:-

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"7. .... It was upto the tribunal consider as to whether the punishment of dismissal was adequate or not. In that behalf, the tribunal held this workman should have retired on super-annuation even before 1990. Hence, reinstatement was not possible and desirable in the circumstances of the case. It was in that view, the tribunal awarded him the compensation of Rs.30,000. In my view, this is wholly incorrect. The Supreme Court has recently taken a view in U.P.State Road Transport Corporation Vs. Mahesh Kumar Mishra, 2000 (3) SCC 450 : 2000-I-LLJ-1113 that in such matters, when the conductors defraud the Transport Corporation by not issuing the tickets or issuing the false tickets, a light view should not be taken. In that case, the Apex Court approved the strict view taken by the High Court. In the case on hand, though the amount of Rs.3.70 appears to be meagre, it has to be borne in mind that the concerned employee was making number of trips every day and if in one trip, he could deraud the Corporation by Rs.3,70, the figure that he would be able to defraud the Corporation would be staggering.

8. In my view, the punishment of dismissal is therefore apt which was given by the management."

7. In the decision reported in Volume 77-1990 F.J.R. 1 (referred to supra) the misconduct that was found established against the workman involved threatening the highest executive viz., the President of the Company, with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. Three of the workmen were office bearers of the Union and after observing that these workmen cannot be said to have acted at the instigation of somebody and taking into consideration the facts and circumstances of the case and keeping in view the interests of the industry, the Apex Court felt that it is not desirable and expedient to direct reinstatement of the workmen and accordingly affirmed the judgment of the High Court and therefore, set-aside the direction relating to reinstatement of the workmen but instead directed payment of compensation for loss of future employment.

8. Learned counsel for the second respondent by relying upon the decision reported in Volume 77-1990 F.J.R. 1 (referred to supra) submitted that though the charges levelled against the second respondent have been proved, considering the facts and circumstances of the case, the Labour Court has taken a sympathetic view and directed the payment of Rs.35,000/- on the ground of mercy and as such, such a direction may not be interfered with by this Court.

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9. I have carefully considered the submissions made on either side and the materials available on record.

10. The facts of the case on hand and the facts of the case reported in Volume 77-1990 F.J.R. 1 (referred to supra) are totally different. The charges levelled against the second respondent in this case is that he abetted the commission of theft. The said charge has been found to be proved and that finding has become final. It is settled law that when the Labour Court comes to the conclusion that the non-employment was not justified, there is every scope for interfering with the punishment by invoking Section 11A of the Industrial Disputes Act but once the Labour Court comes to the conclusion that the non-employment of the workman was justified, there is absolutely no jurisdiction for the Labour Court to move forward and consider the question of adequacy of the punishment imposed. The said legal proposition has been reiterated by this Court in the above said two decisions.

11. Recently the Apex Court has held in the case of Karnataka Bank Limited Vs. A.L.Mohan Rao and reported in 2006 (1) S.C.C. 63 that it is for the Disciplinary Authority to decide what is the fit punishment to be imposed. Following the same, a Division Bench of this Court in the judgment rendered in W.A.No.2272 of 2000 has held that it is the prerogative of the management to impose appropriate punishment once the misconduct is proved and such a punishment imposed cannot be interfered with by the Courts on the ground of misplaced sympathy, especially when the misconduct relates to dishonesty of the workmen.

12. In the judgment reported in 2003(4) S.C.C. 364 (CHAIRMAN & MANAGING DIRECTOR, UNITED COMMERCIAL BANK v. P.C. KAKKAR), the Supreme Court in dealing with the punishment inflicted on an employee of the Bank, has observed as here-under:-

> "A bank officer is required to exercise higher standards of honesty and integrity. Every officer/employee of the bank is required to take all possible steps to project the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank."

Recently in the judgment reported in AIR 2007 Supreme Court Weekly 3656 (UCO BANK v. RAJINDER LAL CAPOOR) in dealing with the punishment imposed on a Bank employee, the Supreme Court observed that "the officers of the bank enjoys a part of confidence in them and when an employee of the bank is found to have embezzled or misappropriated any amount etc., the

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Court takes a strict view of the matter."

13. If the case on hand is considered in the light of the law laid down in the above said decisions, it could be seen when the second respondent who enjoys a part of confidence in him while he was holding a responsible position in the petitioner-sangam has betrayed the confidence reposed on him by the Sangam, the Sangam cannot be expected to show any sympathy to the second respondent. Therefore, this Court is of the considered view that the Labour Court has committed an error in awarding the ex-gratia payment of Rs.35,000/- after recording a finding that the misconduct on the part of the second respondent has been proved.

14. In such view of the matter, the award of the Labour Court is set-aside and the writ petition is allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Presiding Officer,
Labour Court,
Madurai - 20.

+1cc to Mr.R.Parthiban, Advocate Sr 42922
+1c to Mr.T.Srinivasaraghavan, Advocate Sr 42274

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